

IN THE U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

TIARA SMART, Administratrix of the Estate
of FRANK J. SMART, JR., Deceased,

No. 2:15-cv-00953

Plaintiff

v.

CORIZON, INC.; CORIZON HEALTH, INC.;
ALLEGHENY COUNTY d/b/a
ALLEGHENY COUNTY JAIL; and
ORLANDO HARPER,

Defendants.

**CONCISE STATEMENT OF MATERIAL FACTS SUPPORTING
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

NOW COME Defendants Allegheny County and Orlando Harper, by their counsel, Dennis Biondo Jr., and file the following statement.

1. On January 4, 2015, Frank Smart, was committed to the Allegheny County Jail ("ACJ"), at 9:37 a.m. **Exhibit A at AC-10539.**
2. Upon entry into the jail, a medical intake screening of Mr. Smart was conducted by Rae Ann Green of Corizon. **Exhibit B at AC-11606-11608.**
3. When an inmate is brought into the jail a nurse assesses all inmates. **Exhibit C at Pg. 27-28.**
4. As part of Mr. Smart's assessment by Ms. Green, Ms. Green gathered information that Smart had an epilepsy or seizure condition and referred Smart to the Chronic Care Clinic. **Exhibit C at Pg 32, 33.**
5. On January 4, 2015, at or about 10:54 p.m., Corrections Officer Fleisner heard a sound coming from cell #121. **Exhibit D at AC-10191.**

6. At that time Fleisner found Frank Smart in his Allegheny County Jail cell with seizure like activity. **Exhibit D at AC-10191.**
7. Fleisner then called a medical emergency. **Exhibit D at AC-10192.**
8. Capitan Bytner and other Corrections Officers responded along with 4 nurses from Corizon. **Exhibit D at AC-10192.**
9. Officers believed that Smart was resisting medical assistance so Smart was handcuffed with the permission of nurses. **Exhibit D at AC-10192.**
10. Nurse Alisia Hollingsworth, in a statement to police, states that she saw Capitan Robert Bytner lying on top of Smart and had Smart in a headlock. **Exhibit E at AC-10206.**
11. Nurse Logan Berger recalls being in the cell and asking that Smart be placed in the recovery position on his left side. **Exhibit F at Pg. 62.**
12. Nurse Berger stated that no officers interfered with his efforts to respond to the Frank Smart Emergency. **Exhibit F at Pg. 124.**
13. Nurse Berger stated that it appeared to him that Smart was thrashing around and attempting to hit individuals when Berger first observed Smart. **Exhibit F at Pg. 125.**
14. Nurse Berger stated that it appeared to him that Smart might injure himself if he were not secured by officers. **Exhibit F at Pgs. 125, 126.**
15. A phone call was made to 911. **Exhibit F at Pg. 69.**
16. Smart was then placed in shackles and handcuffs. **Exhibit F at Pg. 69.**
17. Plaintiff eventually Smart stopped breathing and Nurse Berger made efforts to resuscitate Smart. **Exhibit F at Pg. 71.**

18. Smart was transported to UPMC Mercy and pronounced dead at 12:22 a.m. on January 5, 2015. **Exhibit G at AC-10342.**
19. At 12:40 on January 5, 2015, Captain Bytner requested investigative assistance of the Allegheny County Homicide Unit in reference to Mr. Smart's death. **Exhibit D at AC-10191.**
20. An autopsy was performed by Dr. Luckasevic of the Allegheny County Medical Examiners office. The cause of death was determined to be seizure disorder with physical restraint in a prone position contributing to Smart's death. **Exhibit G at AC-10342-AC-10343.**
21. Corrections Officers at the ACJ receive training approved by the Pennsylvania Department of Corrections which requires a certain criteria and curriculum to be taught. **Exhibit H at Pg. 23.**
22. Newly hired officers receive 6 weeks of training in the classroom and six weeks of on the job training. **Exhibit H at Pg. 27.**
23. Working corrections officers receive 40 hours of training per year. **Exhibit H at Pg. 28.**
24. All newly hired corrections officers are trained in the use of security restraints. **Exhibit H at Pg. 28, 29.**
25. All Corrections Officers also receive training on positional asphyxia. **Exhibit I at Pg. AC-11392.**
26. The ACJ training on positional asphyxia comes from the training that is approved by the Pennsylvania Department of Corrections. **Exhibit H at Pg. 51-53.**

27. Corizon took over health care services at the jail in September of 2013 and was the health care provider at ACJ on all dates relevant to this suit. **Exhibit J at Pg. 16-17.**
28. Smart's estate, through his daughter Tiara Smart, filed this suit against Corizon, Inc. Corizon Health, Inc., Allegheny County and Warden Orlando Harper. **Exhibit K at Caption and ¶ 1.**
29. Previous defendants Corizon, Inc., and Corizon Health, Inc. have already settled with the Smart Estate. **Exhibit L at ECF #45.**
30. This suit is a civil rights action under 42 U.S.C. § 1983 wherein Plaintiff is essentially trying to prove the Warden Orlando Harper violated Smart's rights under the United States Constitution by being recklessly or deliberately indifferent to his safety and medical needs and did not assess and monitor him appropriately in their supervisory and/or personal roles. **Exhibit K at pages 19-21.**
31. Additionally, Plaintiff is trying to show that the County (specifically the ACJ), through its training, customs and/or policies evidenced deliberate indifference toward Smart's constitutional right to adequate medical care and thereby caused him harm. **Exhibit K at pages 16-18.**
32. Plaintiff demands damages and costs. **Exhibit K pages 18,21, and WHEREFORE Clauses.**
33. For the reasons set forth in Defendants' Motion for Summary Judgment and Brief Supporting Defendants' Second Motion for Summary Judgment, these Defendants move for summary judgment in their favor against Plaintiff.

Respectfully submitted,

January 13, 2017

Date

/s/ Dennis Biondo Jr.

Dennis Biondo Jr.

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